



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 18, 2004

ITEM NUMBER:

SUBJECT: DRAFT ORDINANCE AMENDING THE ZONING CODE TO ESTABLISH ADDITIONAL ZONING REGULATIONS FOR MOTOR VEHICLE RETAIL SALES BUSINESSES AND OUTDOOR COMMUNICATION SYSTEMS OPERATED BY COMMERCIAL AND INDUSTRIAL USES

DATE: OCTOBER 6, 2004

FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: KIMBERLY BRANDT, SENIOR PLANNER

FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT (714) 754-5604

RECOMMENDATION:

Postpone the adoption of an ordinance for twelve months to allow the Harbor Boulevard of Motor Cars Dealers Association to work with their members to address the issues.

BACKGROUND:

On March 22, 2004, the Planning Commission recommended that Council give first reading to a draft ordinance that amended the Zoning Code in respect to standards for landscaped setback adjacent to a public street, landscaping materials, and advertising banners for motor vehicle dealerships, on a 5-0 vote.

On April 19, 2004 Council denied first reading of the draft ordinance and received and filed the report. In a separate motion, Council also directed staff and Planning Commission to work with the Harbor Boulevard of Motor Cars Dealers Association (Association) to discuss solutions regarding the following two issues:

- A ban on amplified sound; and
- A ban on storage of vehicle inventory in residential neighborhoods.

On July 27, 2004, staff met with Association representatives to discuss the issues. On September 27, 2004, Commission recommended that Council postpone the adoption of an ordinance for twelve months to allow the Harbor Boulevard of Motor Cars Dealers Association to work with their members to address the issues.

Further discussion is provided in the following section.

ANALYSIS:

Amplified Sound Ban: Many of the City's automobile dealerships use amplified sound outdoors as a method of communicating with employees and customers during business hours. Although the sound levels do not violate the City's noise ordinance, the amplified sound may be audible in adjacent residential areas. It should be noted that a ban on the use of amplified sound is currently a condition of approval on new conditional use permits for automobile dealerships.

In considering this issue, there are other types of commercial and industrial uses that commonly use outdoor communication systems. Examples include restaurants (both "drive through" and "sit down"), garden centers, and automobile repair businesses. Therefore, any ordinance that bans the use of amplified sound outdoors would need to be expanded to include any type of commercial and industrial business.

In their discussions with staff, Association representatives expressed that the use of outdoor communication systems was a necessary component of their daily business operation. Overall, they felt the problems were limited, and in the past they have worked hard to address community complaints.

Furthermore in lieu of adopting an ordinance, the Association representatives requested that the City allow them to work with their members to voluntarily restrict the use of outdoor communication systems to the hours between 8 a.m. to 7 p.m. Additionally, the Association will continue to work with Code Enforcement to address any site-specific complaints on a case-by-case basis. Code Enforcement has not received any recent complaints regarding outdoor communication systems.

Staff concurs with this suggested approach. The adoption of a citywide ordinance may be too broad in its scope, when the actual problems are limited and better addressed on an individual basis. Staff suggests that any action on an ordinance be delayed for twelve months to give sufficient time to the Association to work with their members. Staff can return with a reevaluation of the need for an ordinance at that time.

Ban on storage of vehicle inventory in residential neighborhoods: The Association representatives indicated that their members do not store their vehicle inventory in residential neighborhoods. Such a practice would expose the vehicles to vandalism and/or theft.

The Police Department has not received any recent complaints of vehicle inventory being stored on residential streets. Staff believes this type of business practice is best handled on a case-by-case basis by existing Municipal Code remedies. Title 20 prohibits the operation of a business not consistent with all applicable zoning approvals and approved plans (Section 20-4(b)), and violations are treated as misdemeanors. Furthermore, conditional use permits are required for automobile dealerships, and the Planning Commission could review/call up a conditional use

permit for either modification or revocation. Given these existing Municipal Code provisions, staff does not believe any additional code amendments are necessary.

Additional analysis is contained in the attached Planning Commission staff report (Attachment 2); the Commission meeting minutes are also contained in Attachment 2.

ALTERNATIVES:

Council may now choose to give first reading to the attached ordinance that bans outdoor communication systems (see Attachment 1). Staff notes this ordinance applies to all commercial and industrial uses, and it is not just limited to automobile dealerships.

ENVIRONMENTAL DETERMINATION:

The code amendment has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt.

FISCAL REVIEW:

This ordinance does not require fiscal review.

LEGAL REVIEW:


The City Attorney's Office has reviewed the draft ordinance and approved it as to form.


ENVIRONMENTAL DETERMINATION:

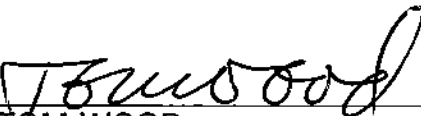
These code amendments have been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and have been found to be exempt.

CONCLUSION

Planning Commission supports the Association's request that they voluntarily limit the operation of their outdoor communication systems, and that the need for a citywide ban on these types of systems should be reevaluated in twelve months. Furthermore, Commission recommends that there are sufficient Municipal Code remedies to address the issue of the storage of vehicle inventory in residential neighborhoods and that future occurrences can be addressed on an individual basis.


KIMBERLY BRANDT
Senior Planner


DONALD D. LAVIM
Deputy City Mgr.-Dev. Svs. Director


TOM WOOD
Acting City Attorney

DISTRIBUTION: City Manager
City Attorney
Public Services Director
City Clerk (2)
Staff (4)
File

Ed Fawcett
Costa Mesa Chamber of Commerce
1700 Adams Avenue, Suite 101
Costa Mesa, CA 92626

Jon Gray
1885 Tahiti Drive
Costa Mesa, CA 92626

Kirk Varga
Theodore Robins Ford
2060 Harbor Blvd.
Costa Mesa CA 92628

Denis Retoske
Harbor Boulevard of Motor Cars
Dealership Association
2973 Harbor Boulevard
PMB #353
Costa Mesa, CA 92626

ATTACHMENTS: 1 Draft ordinance
2 Planning Commission staff report and
meeting minutes

File Name: 101804MOTORVEHORDCC Date: 10/04/04

Time: 10 a.m.

ATTACHMENT 1
DRAFT ORDINANCE

ORDINANCE NO. 04-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING OPERATION OF OUTDOOR COMMUNICATION SYSTEMS BY COMMERCIAL AND INDUSTRIAL USES.

WHEREAS, the City of Costa Mesa's Municipal Code does not currently address commercial and industrial uses that operate outdoor communication systems.

WHEREAS, the operation of an outdoor communication system by a commercial or industrial use is a nuisance when it is audible to adjacent and nearby neighbors, including both businesses and residences; and

WHEREAS, the City Council of the City of Costa Mesa has determined that limiting the operation of outdoor communication systems serves the greater health, safety, and concern of the citizens of the City.

THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The following section is hereby added to Chapter XIII, Title 13 of the Costa Mesa Municipal Code to read as follows:

"Sec. 13-283.5 OUTDOOR COMMUNICATION SYSTEM

It shall be unlawful for any commercial and/or industrial business to operate an outdoor communication system that amplifies a voice, chime, ring, or similar sound so that it is audible on a property that contains residential uses and is an annoyance to a reasonable person residing on the property, regardless of the property's zoning or whether the noise level exceeds the standards specified in Section 13-280 EXTERIOR NOISE STANDARDS and Section 13-281 INTERIOR NOISE STANDARDS. This subsection shall not apply to an outdoor communication system that is used in conjunction with a special event that is permitted pursuant to Title 9 of this Code."

Section 2. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. Publication. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after its passage and, before the expiration of fifteen (15) days after its passage, shall be published once in the NEWPORT BEACH-COSTA MESA PILOT, a newspaper of general circulation printed and published in the City of Costa Mesa, or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names of the members of the City Council voting for and against the same.

PASSED AND ADOPTED this ____ day of _____, 2004

Mayor

ATTEST:

APPROVED AS TO FORM:

Deputy City Clerk of the
City of Costa Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 04-____ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2004, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2004, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2004.

Deputy City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa

ATTACHMENT 2

PLANNING COMMISSION MEETING MINUTES AND STAFF REPORT

Excerpt from the minutes of the Planning Commission meeting of September 27, 2004

**DRAFT ORDINANCE
ESTABLISHING ZONING
REGULATIONS FOR
MOTOR VEHICLE RETAIL
SALES BUSINESSES**

City

The Chair opened the public hearing for consideration of a draft ordinance for the City Council of the City of Costa Mesa, California amending Title 13 of the City of Costa Municipal Code, to establish additional zoning regulations for motor vehicle retail sales businesses; and outdoor communication systems operated by commercial and industrial uses. Environmental determination: exempt.

Staff recommended the Planning Commission recommend to City Council, a postponement of the item for a period of twelve (12) months, by adoption of Planning Commission resolution to allow Harbor Boulevard of Motor Cars Dealers Association to work with their members to address outdoor communication systems.

Ms. Brandt explained that in discussions with the member dealers, the issue regarding amplified sound was of most concern to them. There are several dealers within the City that have been in existence for many years and have used outdoor communications systems that are an integral part to the daily business operation. She said the Association recommended that, as opposed to implementing an ordinance at this point, that the City Council allow them to work with the Association members to voluntarily restrict the use of their outdoor communication systems between 8 a.m. and 7 p.m. In reviewing this recommendation with them, staff believed that was an alternative worth pursuing. She said there are no current, ongoing complaints with Code Enforcement regarding the use of these outdoor systems. Staff is recommending that this alternative approach be implemented for a year and then come back for review to see if it's necessary to adopt a draft ordinance. She noted that if the Commission wishes to recommend adoption of an ordinance to City Council, there is one attached to the staff report. She said it is important to remember that the City could not limit this "ban" on an outdoor communication system just to motor vehicle dealers; it would also have to apply to all types of commercial and industrial businesses.

Ms. Brandt stated that the other issue was a ban on the storage of vehicle inventory in residential areas. She said the Association stated that it is not their dealers' business practice to store their inventory on residential streets because it would expose them to vandalism and theft; it is not their standard operating procedure to do this so they did not feel (1) that it was necessary to adopt an ordinance, or (2) they would be neutral on any type of ordinance

that the City would adopt in that respect, given that it is not their business practice. Ms. Brandt said it is staff's recommendation that there is no need to do anything additional to the municipal code to address this type of business operation. She said staff feels that this happens infrequently and there are simple measures that can be used to enforce it without adopting a new municipal code provision.

Commissioner Foley confirmed with Ms. Brandt that the association does not represent *all* of the car dealerships because there are other car dealerships that are not members of the association that seem to have other issues that are being dealt with. Ms. Brandt stated that if there is a dealer that would use this type of practice, the thought is, that it would be a smaller independent dealer.

There was discussion between Commissioner Bever and Ms. Brandt regarding complaints and how they would be handled.

In response to a question from Vice Chair Perkins as to why 12 months is appropriate, Ms. Brandt stated that within that time frame, staff is anticipating that the association will be working with its members regarding voluntary compliance with the use of the outdoor paging system. It is anticipated the Chief Code Enforcement Officer attending one or more of their association meetings in terms of establishing a relationship with the members. If a complaint were to occur, it would be handled on a case-by-case basis. The 12 months would provide enough time to establish a record of these types of complaints and how they were responded to and how long it took to correct the situation.

Kirk Varga, General Manager of Theodore Robins Ford; Matt Moloci, South Coast Acura (past President of Harbor Boulevard of Cars) stated that they have met together and discussed ways to refocus speakers, by eliminating paging prior to 8 a.m. and after 7 p.m. in an effort to be good neighbors. Mr. Varga said they have not received any complaints and try to do a good job and they are eliminating any type of music. He said the association is working together to resolve any issues. Mr. Moloci noted that the association has invited people from the City to attend their meetings and provide recommendations; they would be willing to consider them.

Commissioner Bever asked the representatives if they would be willing to work with former mayor, Sandra Genis who has been hearing things in the neighborhood and provide her with a phone number or some other means of communications. Mr. Varga said they have the ability to provide that information to her.

Mike Berry, 2064 Meadow View, Costa Mesa, stated that way this issue was presented to the Commission was inappropriate. He said problems with this issue have been going on for six years that he knows about. At least twice representatives have come before the Commission and discussed this topic. He noted that there are more dealers of Placentia Avenue then there are members in the Harbor Boulevard of Cars. Commissioner Foley stated that Ms. Brandt did in fact, raise the issue, i.e., that the ramifications of the ordinance would be that it would apply to fast food restaurants, etc., every place in the City.

Mr. Valantine stated that Mr. Berry has brought the Placentia Avenue situation to the attention of staff, and he thought he had been informed of the status and offered his apologies if that is not the case. He said City staff, both Planning and Code Enforcement, have done a comprehensive research of Placentia Avenue in terms of parking and set backs; selling of cars from some of those properties; missing landscaping; etc., and the Code Enforcement Office is in the process of following up on those. He said some of those properties that were previously selling are no longer selling cars, so we are making progress, but it is a long street and it will take some time to get all the way through. In response to a question from Commissioner Foley regarding a document relating to these actions, Mr. Valantine stated that the documentation for these actions is some internal collection of papers and historical information.

No one else wished to speak and the Chair closed the public hearing.

MOTION:
Ordinance establishing
additional regulations for
Motor Vehicle Retail Sales
Businesses
Recommended postponement

A motion was made by Commissioner Foley, seconded by Chairman Garlich, and carried 5-0 to recommend to City Council, postponement of this item for 12 months, by adoption of Planning Commission Resolution PC-04-65, to allow Harbor Boulevard of Motor Cars Dealers Association to work with their members to address the issues.

In response to a question from the Chair, Mr. Brandt stated that this item would go to the City Council agenda of October 18, 2004.



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92626-1200

DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,
PLEASE CONTACT THE CITY CLERK AT (714) 754-5223**